Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. 68

IN THE

SUPREME COURT OF THE UNITED STATES

CRISANTO MENDONCA
Petitioner,

v.

JOSEPH MEDEIROS Et Al;
Respondents

On Petition For Writ of Certiorari
To the United States Court of
Appeals For the First Circuit

PETITION FOR WRIT OF CERTIORARI

Crisanto Mendonca
P. O. Box 390944
Cambridge MA, 02139
617- 474-2210

23 pg

QUESTION(S) PRESENTED

Whether the U. S. Court of Appeals for the First Circuit a proposed per curiam opinion affirmed pursuant to First Circuit Local Rule 27(c) Applicable to this case.

PARTIES TO THE PROCEEDINGS

List in addition to the party named do not appear in the caption of the case on cover page, James E. Kilduff Inc; Michelle Matusewicz, Steven Norman, and Sentry Insurance Company.

TABLE OF CONTENTS

pages

QUESTION PRESENTED.....i

LIST OF PARTIES.....ii

OPINION BELOW.....1

STATEMENT OF JURISDICTION.....2

STATUTORY PROVISIONS INVOLVED.....3

STATEMENT OF THE CASE.....4

REASONS FOR GRANTING THE WRIT.....5, 6

I

The U. S. Court of Appeals for the First Circuit a proposed per curiam opinion affirmed pursuant to First Circuit Local Rule 27(c) conflicting with Applicable Statutory Provision of Law of Federal Rule Appellate Procedure Rule 27(C)(iii).

II

There is the rebuttal witness existence discovered medical record physical evidence damages caused from the impact from the motor vehicle accident genuine issue of material fact pursuant to F. R. C. P. Rule 56(b) due to the finding fact respondent negligent the petitioner former attorney Mr. Andrew Fischer did not justify the physical evidence recognized by the State Superior Court trial by questioning Mr. Fischer at the time of the trial proceeding before decision deal with dispute of irrelevant exhibits that was presented.

CONCLUSION.....6

INDEX TO APPENDICES

pages
U. S. Court of Appeals for the First Circuit.....7,8,9,10,11,12
U. S. District Court trial.....13;14,15
State Superior Court trial.....16,17
Jury Verdict.....18

TABLE OF AUTHORITIES CITED

CASE: pages
Opinion Below.....1
28 U. S. C. § 1254.....2
Statutory Provisions Involved.....3

Applicable Statutory Provision Federal Rule
Appellate Procedure Rule 27(C)(iii) 5
F . R. C. P. Rule 56(b).....6

OPINIONS BELOW

The opinion of the U. S. Court of Appeals for the First Circuit is reprinted in the Appendix (A) is reported December 23, 1999, February 8, 2000, and January 28, 2002.

The opinion of the U. S. District Court trial is reprinted in the Appendix (B) is reported July 9, 1999.

The opinion of the State Superior Court trial is reprinted in the Appendix (C) is reported July 30, 1997.

The jury verdict is reprinted in the Appendix (D) is reported July 30, 1997.

STATEMENT OF JURISDICTION

Following a Motion to Reopen, the U. S. Court of Appeals for the First Circuit order denied on January 28, 2002, and this petition for a writ of certiorari has been filed within 90 days of that date. The Court has jurisdiction to review the U. S. Court of Appeals for the First Circuit's decision under 28 U. S. C. § 1254.

STATUTORY PROVISIONS INVOLVED

First Circuit Local Rule 27(c) at any time, on such notice as the Court may order, on motion of appellee or sua sponte, the Court may dismiss the appeal or other request for relief or affirm and enforce the judgment or order below if the Court lacks jurisdiction, or if it shall clearly appear that no substantial question is presented. In case of obvious error the Court may similarly, reverse. Motions for such relief should be promptly filed when the occasion appears, and must be accompanied by four copies of a memorandum or brief.

Federal Rule of Civil Procedure Rule 12(b) defenses objections when and how presented by pleading or Motion –Motion for Judgment on pleadings (b) how Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counter claim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. Federal Rule of Civil Procedure 12 (c) Motion for Judgment on the pleadings, after the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings, if on a motion for judgment on the pleadings, matters outside the pleadings, are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

STATEMENT OF THE CASE

December 23, 1999, U. S. Court of Appeals for the First Circuit a proposed per curiam opinion affirmed pursuant to First Circuit Local Rule 27(c). Appendix (A) (pg. 7 and 8). February 8, 2000, order denied timely Petition for Rehearing. (pg. 9 and 10.). January 28, 2002 order denied Motion to Reopen. (pg.11 and 12.).

July 9, 1999, U. S. District Court trial a proposed endorsed opinion order granting respondent attorney's Motion with a proposed pursuant to F.R.C.P. 12(b) (1, 12 (b) (2) and F.R.C.P. 12 (c), dismiss the petitioner's case assuming jurisdiction of res judicata. Appendix (B) (pg. 13, 14, and 15.).

July 30, 1997, State Superior Court trial jury excused exhibits offered Miscellaneous matters. Your Honor if there is a dispute. The Court : we will do it before I bring the jury back. Mr. Fischer : Your Honor, before we do that could I move for required finding of Liability as to the accident itself ? There being no evidence, the only evidence there being is that the truck backed into the vehicle.

THE COURT: The credibility and reliability of that evidence is for the jury to determine. I will not issue any directed verdict. THE COURT: do you anticipate any rebuttal witnesses, Mr. Fischer? Mr. Fischer No, your Honor. THE COURT: Okay then we will deal with the exhibits. Appendix (C) (pg. 16 and 17.).

July 30, 1997, jury verdict finding respondent negligent on question number 1, on question number 2 negligence of defendant no a proximate cause of injury to Plaintiff Crisanto Mendonca. Appendix (D) (pg. 18).

REASONS FOR GRANTING THE WRIT

I

The writ of certiorari should be granted due to, the U. S. Court of Appeals for the First Circuit a proposed per curiam opinion affirmed pursuant to First Circuit Local Rule 27(c) Appendix (A) (pg. 7 and 8.) date December 23, 1999 is not required. (see) Applicable Statutory Provision of Law of Federal Rule Appellate Procedure Rule 27(C)(iii). cited obviously

II

The writ of certiorari should be granted due to, there is the rebuttal witness existence discovered Medical record physical evidence damages caused from the impact from the motor vehicle accident genuine issue of material fact pursuant to F. R. C. P. Rule 56(b) due to the finding fact respondent negligent the petitioner former attorney Mr. Andrew Fischer did not justify the physical evidence recognized by the State Superior Court trial by questioning Mr. Fischer at the time of the trial proceeding before decision deal with dispute of irrelevant exhibits that was presented.(see) Appendix (C) (pg.16 and 17.), and Appendix (D) (pg.18.) on question number 1.

CONCLUSION

The Court should review this case to resolve a conflicting issue among the U. S. Court of Appeals for the First Circuit a proposed per curiam opinion affirmed pursuant to First Circuit Local Rule 27(c) and to clarify the basis and extent of Applicable Statutory Provision of Law of Federal Rule Appellate Procedure Rule 27(C)(iii).

Respectfully Submitted,

Crisanto Mendonca

APPENDIX (A)

NOT FOR PUBLICATION-NOT TO BE CITED PRECEDENT

United States Court of Appeals
For the First Circuit

No. 99-1879

CRISANTO MENDONCA

Plaintiff, Appellant

v.

JOSEPH MEDEIROS, JAMES KILDUFF, INC;

Defendants, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT

COURT FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Patti B. Saris, U. S. District Judge]

Before

APPENDIX (A)

Selya, Circuit Judge,
Cyr, Senior Circuit Judge,
and Lipez, Circuit Judge.

Crisanto Mendonca on brief pro se.
Michelle A. Matusewicz and Law Offices of Lawrence F. McAuliffe on brief for appellees.

December 23, 1999

Per Curiam. After a thorough review of the records and submissions of the parties, we affirm on the ground that the district court lacked subject matter jurisdiction. See District of Columbia Court of Appeals v. Feldman, 460 U. S. 462, 476 (1983) ("[A] United States District Court has no authority to review final judgments of state court in judicial proceedings ."); Rooker v. Fidelity Trust Co., 263 U. S. 413, 415-16 (1923) (same).

Affirmed. 1st Cir. Loc. R. 27(c).

APPENDIX (A)

United States Court of Appeals
For the First Circuit

No. 99-1879

CRISANTO MENDONCA

Plaintiff, Appellant,

v.

JOSEPH MEDEIROS, JAMES KILDUFF, INC;

Defendants, Appellees.

Before

Selya, Circuit Judge,
Cyr, Senior Circuit Judge,
and Lipez, Circuit Judge.

APPENDIX (A)

ORDER OF COURT
Entered: February 8, 2 000

The motion for reconsideration is denied. The Federal courts simply have no jurisdiction to review the State court 's decisions, no matter how inadequate appellant claims they may be, and we see nothing in appellant's most recent submission to convince us that, at bottom, he is not challenging the State court's decision to deny him recovery for his injuries.

It is so ordered.

By the Court:
PHOEBE MORSE
Clerk.

cc: Mr. Mendonca, Ms Matusewicz

APPENDIX (A)

United States Court of Appeals
For the First Circuit

No. 99-1879

CRISANTO MENDONCA,
Plaintiff, Appellant,
v.

JOSEPH MEDEIROS, JAMES KILDUFF INC;
Defendants, Appellees.

Before

Selya, Circuit Judge,
Campbell, Senior Circuit Judge,
and Lynch, Circuit Judge.

APPENDIX (A)

ORDER OF COURT

Entered: January 28, 2002

Appellant 's " Petition to Reopen, " which we treat as a request to recall the mandate, is denied, as appellant has failed to show any exceptional circumstances which would justify such an extraordinary step. See Boston & Maine Corp. v. Town of Hampton, 7 F.3d 281, 282-83 (1st Cir. 1993).

By the Court:
Richard Cushing Donovan, Clerk
JANICE M. O'NEIL

By:_____
Chief Deputy Clerk.

cc: Ms Matusewicz, Mr. Mendonca

APPENDIX (B)

U. S. District Court APPEAL
U. S. District Court Massachusetts (Boston)

CIVIL DOCKET FOR CASE #: 99-CV -11254
Mendonca v. Medeiros et al Filed: 06 / 09 / 99
Assigned to: Judge Patti B. Saris
Demand: $0. ,000

CRISANTO MENDONCA Crisanto Mendonca
Plaintiff [COR LD NTC]
P. O. Box 390944
Cambridge, MA 02139

v.

JOSEPH MEDEIROS Michelle A. Matusewicz
Defendant [COR LD NTC]
Law Offices of Lawrence F.
McAuliffe 3 Carlisle Road
JAMES KILDUFF, INC. Westford, MA 01886
Defendant 508 -392-7235
Michelle A. Matusewicz
(See) above)
[COR LD NTC]

APPENDIX (B)

Proceedings include all events.
1: 99 cv11254 Mendonca v. Medeiros, et al APPEAL

6 / 9 / 99 – 1 Complaint filed. case assigned to Judge: Honorable Patti B. Saris. Receipt #: 14877 Amount: $150. Fee Status: pd (pc) [Entry dated 06 / 11 / 99].

6 / 9 / 99 – Summons issued for Joseph Medeiros (pc) [Entry date 06 / 11 / 99].

6 / 15 / 99 – 2 Return of service executed as to Joseph Medeiros with service on 6 / 10 / 99 filed. Answer due on 6 / 30 / 99 for Joseph Medeiros (sad) [Entry date 06 / 16 / 99].

6 / 15 / 99- 3 Return of service executed as to James Kilduff with service on 6 / 10 / 99 / filed. Answer due on 6 / 30 / 99 for James Kilduff (sad) [Entry date 06 / 16 / 99].

6 / 21 / 99- 5 Motion by Joseph Medeiros, James Kilduff to dismiss in lieu of answer pursuant to F. R. C. P. 12 (b) (1, 12 (b) (2) and F. R. C. P. 12 (c), filed, c/s. (pc) [Entry date 06 / 22 / 99].

APPENDIX (B)

6 / 22 / 99- 4 Notice of appearance of attorney for Joseph Medeiros, James Kilduff by filed c/s. (pc).

6 / 25 / 99- 6 Response by Crisanto Mendonca in opposition to [5-1] motion to dismiss in lieu of answer pursuant to F. R. C. P. 12 (b) (1, 12 (b) (2) and F. R. C. P. 12 (c), filed. (tmm) [Entry date 07 / 07 99]

7 / 9 / 99-- Judge Patti B. Saris. Endorsed Order entered granting [5-1] motion to dismiss in lieu of answer pursuant to F. R. C. P. 12 (b) (1, 12 (b) (2) and F. R. C. P. (c) Assuming jurisdiction, I allow the motion to dismiss on the ground that this action is barred under the doctrine of res judicata. [EOD date 7 / 12 / 99], cc/ cl. (pc)

7 / 16 / 99 -- Notice of Appeal by Crisanto Mendonca filed. Fee Status: paid Fee Amount: $105. Receipt #: 15794 Appeal record due on 8 / 15 / 99 (sad) [Entry date 07 21 / 99]. Notice of Docketing Record on Appeal From USCA re : [8-1] appeal, received. USCA NUMBER: 99-1879 (mgl).

APPENDIX (C)

MIDDLESEX: SS SUPERIOR COURT
CA 94- 1196

CRISANTO MENDONCA
Plaintiff
Versus

JOSEPH MEDEIROS and
JAMES KILDUFF INC.
Defendants

Before: SOSMAN, J,
and Jury

FOURTH DAY OF TRIAL July 30, 1997

Court Room 10-A
Middlesex Superior Court
Cambridge, Massachusetts

Lila Moreau,
Official Court Reporter
and
Registered Professional Reporter

APPENDIX (C)

1- Jury Excused exhibits offered Miscellaneous Matters
2- Your Honor, if there is a dispute.
3- THE COURT: we will do it before I bring the jury back.
5- Mr. Fischer: Your Honor, before we do that, could I move for a Required finding of Liability as to the accident itself? There being no evidence, the only evidence there being is that truck backed into the vehicle.
11- THE COURT: The credibility and reliability of that evidence is for the jury to determine. I will not issue any directed verdict.
17- THE COURT: Do you anticipate any rebuttal witness Mr Fischer ? Mr. Fischer: No, you Honor.
20- THE COURT: Okay then we will deal with the exhibits. MENDONCA vs MEDEIROS & KILDUFF, INC; CA 94-1196.

APPENDIX (D)

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX SUPERIOR COURT
Civil Action No. 94-1196

CRISANTO MENDONCA
vs.

JOSEPH MEDEIROS and JAMES KILDUFF, INC.

SPECIAL JURY VERDICT

1: Was defendant Joseph Medeiros negligent ?

YES_X_ NO_____

2: If your answer to Q.1 is YES, was the negligence of defendant a proximate cause of injury to plaintiff Crisanto Mendonca.

YES_____ NO_X

Dated: July 30, 1997. Patricia M. Buna
Foreperson